

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Yu	Team: Squad #3	CCRB Case #: 201804577	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 06/02/2018 6:07 PM	Location of Incident: § 87(2)(b) Forest Avenue Subway station	Precinct: 104	18 Mo. SOL 12/2/2019	EO SOL 12/2/2019	
Date/Time CV Reported Sat, 06/02/2018 8:00 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 06/08/2018 2:23 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Bartichek	12350	960209	104 PCT
2. SGT Marcos Diaz	03679	938364	104 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jervon Bush	23419	962281	104 PCT
2. POM Daniel McGuire	11403	938992	104 PCT
3. POF Kelly Wong	29314	945378	104 PCT
4. POF Asar Sanad	17184	952206	104 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joseph Bartichek	Discourtesy: In the vicinity of § 87(2)(b) in Queens, Police Officer Joseph Bartichek spoke discourteously to § 87(2)(b)	§ 87(2)(g)
B.SGT Marcos Diaz	Abuse: At the Forest Avenue subway station in Queens, Sergeant Marcos Diaz forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(g)
§ 87(4-b), § 87(2)(g)	§ 87(2)(g)	§ 87(2)(g)

Case Summary

On June 2, 2018, § 87(2)(b) filed this complaint with IAB via phone, generating IAB log #2018-21810. The CCRB received this case on June 8, 2018. The case was originally assigned to former-investigator Alfredo Gonzalez and reassigned to SI Patrick Yu on November 21, 2018.

On June 2, 2018, at approximately 6:07 p.m., PO Joseph Bartichek and PO Jervon Bush responded to § 87(2)(b), in Queens, in response to § 87(2)(b)'s 911 call. PO Bartichek allegedly told § 87(2)(b) "Fuck yourself" (**Allegation A: Discourtesy**, § 87(2)(g), § 87(2)(b)) was not summonsed or arrested.

Later that day, at approximately 7:21 p.m., Sgt. Marcos Diaz and PO Daniel McGuire responded to the Forest Avenue subway station in Queens and Sgt. Diaz forcibly removed § 87(2)(b) to the hospital (**Allegation B: Abuse of Authority**, § 87(2)(g)).

§ 87(4-b), § 87(2)(g)

There is no video footage capturing this incident.

Findings and Recommendations

Allegation (A) Discourtesy: In the vicinity of § 87(2)(b) in Queens, Police Officer Joseph Bartichek spoke discourteously to § 87(2)(b)

On June 2, 2018, § 87(2)(b) called 911 for assistance regarding his landlord locking him out of his residence. In his CCRB statement, § 87(2)(b) stated that when PO Bartichek and PO Bush responded, PO Bartichek went to the restaurant attached to his residence and spoke with an employee (Board Review 01). After speaking with the employee, PO Bartichek told § 87(2)(b) that he had obtained the key. PO Bartichek made a gesture to § 87(2)(b) as if to throw the key at § 87(2)(b) but he did not actually throw it, and then stated, "Fuck yourself." PO Bartichek and PO Bush drove off without giving the key to § 87(2)(b).

In a phone statement, an employee, § 87(2)(b) from the restaurant next to § 87(2)(b)'s residence stated that § 87(2)(b) was telling the owner of the restaurant and officers "Get the fuck out of here," when they attempted to give him the key (Board Review 06). § 87(2)(b) did not hear any officers use profanities while speaking with § 87(2)(b). § 87(2)(b) is familiar with § 87(2)(b) and she stated that he frequently calls 911.

PO Bartichek and PO Bush's CCRB statements were generally consistent in that the officers responded to a landlord tenant dispute at the location and upon arriving, they spoke with a tenant who informed them that § 87(2)(b) was refusing to take the key to his residence. PO Bartichek obtained the key from the tenant and attempted to give it to § 87(2)(b) but § 87(2)(b) refused to take it and stated that he would not take a key from officers (Board Review 02). § 87(2)(b) did not explain why he would not take the key. PO Bartichek did not recall how many times he attempted to give the key to § 87(2)(b) before he returned the key to the tenant. PO Bartichek told § 87(2)(b) that he could go to landlord tenant court and PO Bartichek and PO Bush subsequently left the location.

PO Bartichek stated that § 87(2)(b) was slightly agitated during the incident, but § 87(2)(b) did not threaten or curse at PO Bartichek or PO Bush. PO Bartichek denied telling § 87(2)(b) to go “fuck” himself and he denied speaking discourteously to § 87(2)(b). PO Bush also stated that § 87(2)(b) did not use profanities, but he flailed his arms and spoke loudly to the officers (Board Review 03). PO Bush denied hearing PO Bartichek tell § 87(2)(b) to go “fuck [himself],” and denied hearing PO Bartichek use profanity when speaking with § 87(2)(b).

§ 87(2)(g)

Allegation (B) Abuse of Authority: At the Forest Avenue subway station in Queens, Sergeant Marcos Diaz forcibly removed § 87(2)(b) to the hospital.

It is undisputed that § 87(2)(b) was transported to § 87(2)(b) for a psychological evaluation.

After PO Bartichek and PO Bush left the location, § 87(2)(b) called 311 and was eventually transferred to IAB. In his CCRB testimony, § 87(2)(b) stated that he reported to IAB that an officer had insulted him (Board Review 01). During the call, § 87(2)(b) said that he was not going to kill himself and was not going to cut himself. During the interview, § 87(2)(b) stated that he believed that the operator misheard him saying that he wanted to cut himself, but he told the operator that he did not want to cut himself again. Officers responded and met § 87(2)(b) on the platform of the Forest Avenue subway station. Eventually, Sgt. Diaz asked § 87(2)(b) to come down with him, but § 87(2)(b) refused to do so. Sgt. Diaz subsequently told § 87(2)(b) that he needed to go to the hospital. At some point, an ambulance arrived at the station and an EMT spoke with § 87(2)(b). The EMT told § 87(2)(b) that it was advised that he went to the hospital and Sgt. Diaz later guided § 87(2)(b) to the ambulance. § 87(2)(b) explained to the EMT that he was sick but did not need any psychiatric treatment and that he did not take any medication for psychiatric issues. § 87(2)(b) also informed the EMT that he had an appointment with a psychiatrist, but had not been diagnosed with anything. The EMT then told § 87(2)(b) that it would be good to go to the hospital so that he can get treatment for his legs. § 87(2)(b) was then transported to § 87(2)(b) via ambulance. He received treatment for a preexisting condition related to his legs, but did not receive psychiatric treatment.

Sgt. Diaz, PO McGuire, PO Bartichek, and PO Bush provided generally consistent CCRB statements regarding responding to the 911 call for an individual (identified via the investigation as § 87(2)(b)) threatening to hurt themselves (Board Review 03-05). All of the officers, aside from PO Bartichek, stated that the 911 call also categorized the job as involving an emotionally disturbed person (EDP). PO McGuire, PO Bartichek, and PO Bush did not state that they had any familiarities with § 87(2)(b) prior to this incident. In his CCRB testimony, Sgt. Diaz stated that the radio run specified that § 87(2)(b) stated that if he saw another officer from the 104th Precinct, he would kill himself (Board Review 04). Sgt. Diaz recognized § 87(2)(b) from an incident report (UF49) noting that a week prior to the incident date, § 87(2)(b) cut his arms in an attempt to commit suicide. Sgt. Diaz also stated that § 87(2)(b) has a history of being emotionally disturbed and has been having issues with the 104th Precinct.

Upon arriving to the location, Sgt. Diaz spoke with § 87(2)(b). Sgt. Diaz attempted to have § 87(2)(b) come downstairs because he feared that § 87(2)(b) might jump on the tracks given that the call was for a suicidal EDP. Eventually, § 87(2)(b) complied. EMS was automatically dispatched to the location. Sgt. Diaz asked § 87(2)(b) about the statements he made to 911, and § 87(2)(b) stated that he made those statements because he was not happy with how the 104th Precinct deals with him. He also stated that he was not happy with his landlord and that his landlord had destroyed his apartment. § 87(2)(b) did not make any statements in Sgt. Diaz's presence that indicated he wanted to hurt himself, but § 87(2)(b) confirmed that he had made those statements to 911.

PO Bartichek did not recall if § 87(2)(b) ever denied, or admitted, to stating that he wanted to hurt himself (Board Review 02). PO Bartichek could not recall § 87(2)(b)'s demeanor. § 87(2)(b) did not make any statements that suggested to PO Bush that § 87(2)(b) wanted to hurt himself. PO Bush did not recall if officers specifically spoke with § 87(2)(b) about the statements he made over the phone and he did not recall if § 87(2)(b) denied making those statements (Board Review 03). PO McGuire did not observe any behavior from § 87(2)(b) at the location that led him to believe that § 87(2)(b) was an EDP (Board Review 05). PO McGuire did not know who made the decision to transport § 87(2)(b) to the hospital and did not know for what reason he was transported.

Eventually, EMS arrived and § 87(2)(b) was cooperative with going to the hospital.

§ 87(2)(b)'s medical records from § 87(2)(b) recorded the suicidal threats that the police officers stated that § 87(2)(b) made. The medical records also noted that § 87(2)(b) did not make any suicidal threats in the presence of medical personnel, but noted that § 87(2)(b) had attempted suicide in the past (Privileged).

The AIDED report, prepared by PO Bush, noted that § 87(2)(b) had a prior history of harming himself and he called 911 stating that he would kill himself if he saw officers from the 104th Precinct (Board Review 10).

EVENT § 87(2)(b) noted that a suicidal male stated that if he saw officers from the 104th Precinct, he was going to kill himself and disappear (Board Review 17). He stated that he is on medication, he had cut himself in the past, and is going to jump off the ferry or cut himself again.

After § 87(2)(b)'s interaction with PO Bartichek and PO Bush, § 87(2)(b) called 911 seven times requesting for officers to respond. In one of the 911 calls, at 12:40 minutes, § 87(2)(b) stated, "Go to grocery cut myself and (inaudible) cut myself and jump from the roof because there's no law in the town" (Board Review 07). In another 911 call, § 87(2)(b) stated that if officers from the 104th Precinct responded to the location, "[He would] get the train and jump from the ferry." § 87(2)(b) stated that he did not want to hurt anyone. He also said, "I disappear and I'll call you the last time. I'm going to kill myself." (Board Review 08). In a different call, § 87(2)(b) requested the operator to not send officers from the 104th Precinct. § 87(2)(b) stated that he had hurt his arm last Friday and he was going to kill himself now. § 87(2)(b) later told the operator that he was not going to hurt himself and he did not need an ambulance (Board Review 09).

Patrol Guide 221-13 defines an emotionally disturbed individual as a person who appears to be mentally ill or temporarily deranged and is conducting himself in a manner that an officer reasonably believes is likely to result in serious injury to himself or others (Board Review 14).

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

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§ 87(2)(b)

- PO Bartichek has been a member of service for two years and has been a subject in one other CCRB complaint and one allegation; the case is still open. § 87(2)(g)
- Sgt. Diaz has been a member of service for 13 years and has been a subject in one other CCRB complaint and one allegation which was not substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- A Notice of Claim query was sent via email on December 5, 2018 and the results are pending (Board Review 13).

§ 87(2)(b) § 87(2)(c)

[REDACTED]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date